RECENT CASES

Administrative Law—

FINDINGS OF TRIAL EXAMINER ON CREDIBILITY OF WITNESSES REVERSED BY COURT

The NLRB charged a company with unfair labor practices under Section 8(a)(3) of the National Labor Relations Act,[1] alleging discharge of an employee for joining a union and participating in union activities. This charge was supported solely by the employee's testimony. The company claimed the discharge had been made for cause, and supported this defense with the testimony of the company's president, secretary, manager, office manager, superintendent and four employees. The trial examiner, discrediting the company's witnesses, found it guilty, and the Board adopted his findings. The court of appeals credited the company's witnesses rather than the employee, and under the authority of *Universal Camera Corp. v. NLRB* [2] reversed judgment on the ground that the Board's findings were not supported by substantial evidence on the whole record. *Farmers Co-operative Co. v. NLRB,* 208 F.2d 296 (8th Cir. 1953).

The Taft-Hartley Act provides: "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." [3] Before *Universal Camera,* a few courts gave less weight to the Board's conclusion if the trial examiner and the Board had disagreed as to the credibility of witnesses,[4] but most courts reasoned that such a disagreement was immaterial since the findings of the Board, not those of the trial examiner, were to be conclusive if supported by substantial evidence on the whole record.[5] The court of appeals in *Universal Camera Corp. v. NLRB* [6] followed the majority interpretation, affirming the Board and disregarding the trial examiner. The Supreme Court reversed,[7] however, saying that the trial examiner's findings on credibility should be given some consideration, though not as much as a master's. The apparent result of this decision has

1. 61 STAT. 140 (1947), 29 U.S.C. §158(a)(3) (Supp. 1952).

2. 340 U.S. 474 (1951).

3. 61 STAT. 149 (1947), 29 U.S.C. §160(e) (Supp. 1952).

4. See Wyman-Gordon Co. v. NLRB, 153 F.2d 480, 483 (7th Cir. 1946); NLRB v. Ohio Calcium Co., 133 F.2d 721, 724 (6th Cir. 1943); Wilson & Co. v. NLRB, 123 F.2d 411, 418 (8th Cir. 1941); A. E. Staley Mfg. Co. v. NLRB, 117 F.2d 868, 878 (7th Cir. 1940).

5. *E.g.,* NLRB v. Tex-O-Kan Flour Mills Co., 122 F.2d 433, 437 (5th Cir. 1941). *See* NLRB v. Botany Worsted Mills, 133 F.2d 876, 882-3 (3d Cir. 1942).

6. 179 F.2d 749 (2d Cir. 1950).

7. NLRB v. Universal Camera Corp., 340 U.S. 474 (1951).

been to make the examiner's determinations on credibility virtually unreviewable, for in every reported case since then in which the Board has reversed these findings the courts of appeals have in turn reversed the Board.[8] Where the examiner's findings were adopted by the Board, the problem of how much weight, if any, should be given to them was theoretical since either approach yielded the same result.[9] The only effect of *Universal Camera* on these cases was to cause courts which had previously ignored the trial examiner to offer his findings as the rationale for their conclusion. The trial examiner became as immune from review where the Board affirmed him as where it reversed, for the instant case is the first since *Universal Camera* in which the Board agreed with the examiner on credibility and was reversed by the court.[10]

If the trial examiner's determinations on credibility are accepted without question, the substantial evidence on the whole record test would be materially impaired,[11] since the reviewing court would not consider contradictory testimony which the examiner had discredited. Moreover, the Board would be unable to utilize its knowledge of the capabilities of its trial examiners [12] if powerless to upset their findings. On the other hand, if courts give the examiner's findings no weight whatsoever on questions of credibility, the valuable factor of demeanor evidence [13] would be lost in cases in which the Board and examiner disagree. And yet, the fact that the examiner had decided against the employee in every case since *Universal Camera* in which he was reversed by the Board [14] indicates that perhaps the Board should not be given a free hand. In *Universal Camera* the Supreme Court tried to avoid as many of these dangers as possible by distributing the power to determine credibility between the examiner and the Board and by telling the courts to assume more responsibility in reviewing administrative determinations. The fact that some courts have

8. NLRB v. James Thompson & Co., 208 F.2d 743 (2d Cir. 1953); United States Steel Co. v. NLRB, 196 F.2d 459 (7th Cir. 1952); NLRB v. Supreme Bedding & Furniture Mfg. Co., 196 F.2d 997 (5th Cir. 1952); Ohio Associated Tel. Co. v. NLRB, 192 F.2d 664 (6th Cir. 1951); NLRB v. Universal Camera Corp., 190 F.2d 429 (2d Cir. 1951).

9. *Compare* NLRB v. Kropp Forge Co., 178 F.2d 822 (7th Cir. 1949), *cert. denied*, 340 U.S. 810 (1950), and NLRB v. Women's Wear Co., 159 F.2d 866 (2d Cir. 1947), *with* NLRB v. Caroline Cotton Mills, Inc., 167 F.2d 212 (5th Cir. 1948). Note that decisions in the seventh and second circuits differed from that of the fifth circuit where the trial examiner had been reversed by the Board. See notes 4, 5, and 6 *supra*.

10. *But cf.* Victor Products Corp. v. NLRB, 208 F.2d 834 (D.C. Cir. 1953) (only evidence in support of the Board and examiner's findings was hearsay testimony).

11. Jaffe, *Judicial Review: "Substantial Evidence on the Whole Record,"* 64 HARV. L. REV. 1233, 1243 (1951).

12. See Note, *The Status of the Trial Examiner in Administrative Agencies*, 66 HARV. L. REV. 1065, 1068 (1953), wherein the process of appointing trial examiners is described.

13. See NLRB v. Dinion Coil Co., 201 F.2d 484, 487-90 (2d Cir. 1952) (discussion of history and value of demeanor evidence).

14. See cases cited note 4 *supra*.

shown an apathy toward the task of reviewing administrative decisions,[15] however, and the importance of promoting rapid disposition of cases,[16] weigh against giving the courts a broad scope of review on credibility. In the instant case the evidence supporting the findings of the examiner and the Board is weak, but in light of the importance given to the examiner in previous cases, affirmance would not have been unique. Although courts have found the fine line drawn in *Universal Camera* almost impossible to follow,[17] this court seems to have placed the trial examiner in his proper perspective.

Attorneys—

DISBARMENT ORDER REVERSED BY SUPREME COURT ON GROUND OF UNNECESSARY SEVERITY

Respondent was convicted summarily of contempt of court and sentenced to six months' imprisonment as a result of his behavior at trial while serving as attorney for Communists convicted of violating the Smith Act[1] in *Dennis v. United States*.[2] The local bar association, citing this misconduct, secured his disbarment by the District Court for the Southern District of New York. The decision was affirmed by the circuit court of

15. See Judge Hutcheson's opening remarks in NLRB v. Caroline Cotton Mills, Inc., 167 F.2d 212, 213 (5th Cir. 1948) ("This is another one of those dreary reviews of Board proceedings. . . ."), and in NLRB v. Robbins Tire & Rubber Co., 161 F.2d 798 (5th Cir. 1947). See also NLRB v. Minnesota Mining & Mfg. Co., 179 F.2d 323, 325 (8th Cir. 1950) ("We think that the time has come to abbreviate, so far as possible, opinions in these National Labor Board Cases."). Consider the courts' summary disposition of administrative reviews: *e.g.*, NLRB v. Jarka Corp., 198 F.2d 618 (3d Cir. 1952); NLRB v. Oertel Brewing Co., 197 F.2d 59 (6th Cir. 1952).

16. See NLRB v. Sartorius, 140 F.2d 203, 205-6 (2d Cir. 1944) (for expediency's sake court refused to substitute its own judgment on credibility for Board's even though trial examiner had filed no intermediate report).

17. In his first *Universal Camera* opinion, NLRB v. Universal Camera Corp., 179 F.2d 749, 753 (2d Cir. 1950), Judge L. Hand said: ". . . it is practically impossible for a court, upon review of those findings which the Board itself substitutes [for those of the examiner], to consider the Board's reversal as a factor in the courts' own decision. This we say, because we cannot find any middle ground between doing that and treating such reversal as error, whenever it would be such, if done by a judge to a master in equity." When *Universal Camera* was remanded to the Court of Appeals, Judges Hand and Frank could not agree on an interpretation of the Supreme Court formula for handling the problem. Judge Frank suggested in his concurring opinion that Judge Hand was now giving too much weight to the examiner's findings. NLRB v. Universal Camera Corp., 190 F.2d 429, 432 (2d Cir. 1951). In NLRB v. James Thompson & Co., 208 F.2d 743, 746 (2d Cir. 1953), Judge L. Hand said: "We do not see any rational escape from accepting a finding unless we can say that the corroboration of this lost evidence [demeanor evidence] could not have been enough to satisfy any doubts raised by the words; and it must be owned that few findings will not survive such a test."

1. 64 STAT. 987 (1950), 50 U.S.C. 781 (Supp. 1952).

2. The *Dennis* case was affirmed, 341 U.S. 494 (1951). The contempt conviction was affirmed in United States v. Sacher, 182 F.2d 416 (2d Cir. 1950), *aff'd*, 343 U.S. 1 (1952).

appeals,[3] but the Supreme Court reversed on the ground that permanent disbarment was unnecessarily severe under the circumstances. *Sacher v. Association of the Bar of City of New York*, 74 Sup. Ct. 569 (1954).

A long series of cases has established that any court with authority to admit attorneys to practice has power to disbar or otherwise discipline them,[4] presumably not for the purpose of punishment, but to maintain the integrity of the courts and protect the public against unworthy lawyers.[5] Although any disbarment ordered by a federal court is appealable,[6] no rule defining the scope of review has been accepted unanimously. Most courts of appeals, relying on nineteenth century Supreme Court decisions,[7] have asserted the doctrine that a disbarment will be reversed only when the district court has committed an abuse of discretion. Some of these courts have applied the doctrine literally and limited themselves to a narrow review of the record,[8] but others apparently have reiterated the rule only after extensive consideration has led to substantial agreement with the trial court.[9] One circuit has adopted a uniquely wide scope of review, reversing because the trial court's decision was not supported by clear and convincing testimony,[10] and another has reversed without indicating clearly any abuse of discretion.[11] Actually, there seems to have been no Supreme Court precedent on the precise question, for its few decisions necessarily were confined to a narrow scope of review by the procedural bounds of the writ of mandamus under which they arose.[12] The present case does not establish definitely whether disbarment orders may properly be subjected to broader review under the modern procedure of appeal to the circuit court and certiorari to the Supreme Court.[13] Mr. Justice Reed

3. *In re* Sacher, 206 F.2d 358 (2d Cir. 1953), *cert. granted*, 346 U.S. 894 (1953).

4. *E.g., Ex parte* Wall, 107 U.S. 265 (1882); *In re* Spicer, 126 F.2d 288 (6th Cir. 1942); *In re* Fletcher, 107 F.2d 666 (D.C. Cir. 1939); Conley v. United States, 59 F.2d 929 (8th Cir. 1932).

5. *See In re* Isserman, 345 U.S. 286, 289 (1953); *Ex parte* Wall, 107 U.S. 265, 273 (1882). As noted by Mr. Justice Reed in his dissent, the Court's opinion seemingly conflicts with this theory by considering the six months' sentence for contempt as a factor which should mitigate the restriction to be imposed in the disbarment proceeding. Instant case at 571.

6. Howard v. Wilbur, 166 F.2d 884 (6th Cir. 1948); Thatcher v. United States, 212 Fed. 801 (6th Cir. 1914).

7. *Ex parte* Burr, 9 Wheat. 529 (U.S. 1824); *Ex parte* Secombe, 19 How. 9 (U.S. 1856); *Ex parte* Bradley, 7 Wall. 364 (U.S. 1868).

8. Tulman v. Committee on Admissions & Grievances, 135 F.2d 268 (D.C. Cir. 1943); *In re* Schachne, 87 F.2d 887 (2d Cir. 1937).

9. *In re* Spicer, 126 F.2d 288 (6th Cir. 1942); *In re* Claiborne, 119 F.2d 647 (1st Cir. 1941); *In re* Chopak, 160 F.2d 886 (2d Cir. 1947) (suspension).

10. *In re* Fisher, 179 F.2d 361 (7th Cir. 1950).

11. *In re* Patterson, 176 F.2d 966 (9th Cir. 1949).

12. See cases cited note 7 *supra*. In these cases the Court adhered to the orthodox limits of mandamus, scrutinizing only for possible abuse of discretion, gross irregularity in the mode of proceeding, or trial court's lack of jurisdiction.

13. Thatcher v. United States, 212 Fed. 801 (6th Cir. 1914) held that after the Evarts Act, 26 STAT. 828 (1891), as amended, 28 U.S.C. §225 (1941), the proper remedy was writ of error to the circuit court. The writ of error was abolished and appeal substituted by 45 STAT. 54 (1928), 28 U.S.C. §861a (1941). See also Reed, J., dissenting, instant case at 573 n.6.

pointed out in his dissent that on the facts it is difficult to conclude that disbarment was so unjustified as to constitute an abuse of discretion; he said that by reversing without discussion of the abuse of discretion doctrine: ". . . this Court now summarily places itself in the position of a trial court." [14] On the other hand, the per curiam opinion is so brief as to give no indication of any broad theory upon which the Court may have proceeded, and makes no explicit disavowal of the old rule of severely restricted power to reverse.

A great many state appellate courts exhibit the same reluctance to reverse disbarment orders as has characterized traditional federal law.[15] Even the Pennsylvania Supreme Court, which is required by statute to grant trial de novo on appeal,[16] has assigned a high degree of conclusiveness to lower court decisions,[17] since: ". . . the court of first instance knows the lawyer, his standing, character, credibility, and fidelity to trust in a way we cannot." [18] This attitude in the states has substantial repercussions on the federal bar because the Supreme Court [19] and many district courts [20] ban an attorney when he is disbarred by a state court unless the attorney demonstrates within a brief grace period grave reasons for abstaining from that action, and a number of other district courts give conclusive weight to the state determination by disbarring automatically.[21]

Limited appellate review has the advantage of permitting each lower court to regulate the members of its bar according to local standards of conduct and perhaps with the benefit of unique knowledge of the attorney's character. On the other hand, it seems that imposition of so serious a sanction should not depend almost entirely upon the discretion, and conceivably the prejudices, of a single judge. Also, in a typical situation such as the present case, the judge who orders disbarment has not witnessed the alleged misconduct personally and is equally as dependent as an appellate court upon a secondhand account of the attorney's actions. Finally, disbarment proceedings are not so common as to place a severe burden

14. Reed, J,. dissenting, instant case at 573. For illustrations of the misconduct involved, see 182 F.2d 416, 423-4 (2d Cir. 1950); 206 F.2d 358, 359-60 (2d Cir. 1953).

15. *E.g., In re* Hittson, 43 Cal. App. 462, 185 Pac. 308 (1919); Grievance Comm. of Bar of New Haven County v. Sinn, 128 Conn. 419, 23 A.2d 516 (1941); *In re* Wilson, 79 Kan. 674, 100 Pac. 635 (1909); Bar Ass'n of City of Boston v. Sleeper, 251 Mass. 6, 146 N.E. 269 (1925).

16. PA. STAT. ANN. tit. 17, §1663 (Purdon 1952).

17. Kraus's Case, 322 Pa. 362, 185 Atl. 737 (1936); Moyerman's Case, 312 Pa. 555, 167 Atl. 579 (1933).

18. Kraus's Case, *supra* note 17, at 364, 185 Atl. at 738.

19. See Sup. Ct. Rule 2, ¶5 (1925), 28 U.S.C.A. 4 (Supp. 1953); Revised Sup. Ct. Rule 8 (effective July 1, 1954), 98 L. Ed., No. 11, pt. 2, p. 7 (April 12, 1954); *In re* Isserman, 345 U.S. 286 (1953).

20. See, *e.g.*, W.D. Pa. Rule 20(H) (1951) 17 FED. RULES SERV. 936; D. Wash. Rule 6 (1941) 5 FED. RULES SERV. 953; D. Conn. Rule 1(d) (1940) 2 FED. RULES SERV. 783; E.D. Ill. Rule 1(g) (1940) 2 FED. RULES SERV. 787.

21. See, *e.g.*, S.D.N.Y. Rule 5(b) (1952) 16 FED. RULES SERV. 708; N.D.N.Y. Rule 4 (1940) 2 FED. RULES SERV. 812; D.N.J. Rule 5 (1951) 17 FED. RULES SERV. 921; D. Ark. Rule 1(e) (1939) 2 FED. RULES SERV. 779.

upon the circuit courts should a closer examination of orders be required. Balancing of the equities seems to dictate a change in the circuit courts' general theory of reversing only for abuse of discretion. In any event, the instant opinion would have been far more satisfactory had the Court defined clearly the pattern to be followed in the future.

Conflict of Laws—

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT—APPLICATION OF PENNSYLVANIA LAW TO OHIO CITIZEN HELD TO VIOLATE EQUAL PROTECTION OF THE LAWS

Under the Uniform Reciprocal Enforcement of Support Act,[1] the Board of Public Assistance of a Pennsylvania county brought suit in its local court to compel a citizen of Ohio to provide support for his indigent father living in Pennsylvania. As provided by the Act, the suit was transferred to Ohio,[2] and the county court there ordered the Ohio resident to make payments. The court of appeals reversed on the ground that the son was relieved of the statutory duty to support his father[3] by a specific provision of the Ohio Code which exempted children who were deserted while under sixteen years of age.[4] Pennsylvania contended that the Uniform Act, in Sections 4 and 7, gave an election of law,[5] and that the law of Pennsylvania, which provided no relief from liability because of desertion,[6] had been elected. On appeal, the Supreme Court of Ohio affirmed,

1. 9A UNIFORM LAWS ANN. 49 (Supp. 1953). Ohio has adopted the Act substantially as originally proposed, OHIO GEN. CODE ANN. §§ 8007-1 to 8007-19 (Page Supp. 1952); Pennsylvania has repealed the original Act and has adopted the amended Act proposed by the Commissioners, PA. STAT. ANN. tit. 62, §§ 2043.1 to 2043.27 (Purdon Supp. 1953). UNIFORM LAWS ANN., *supra* at 49, lists twenty jurisdictions which have passed the 1950 Act and, at 82, lists seventeen jurisdictions which have passed the Act as amended in 1952. It is stated in Schuch, *The New Reciprocal Non-Support Act*, 23 U. OF CIN. L. REV. 75 (1954), that 46 states have adopted reciprocal support legislation.

2. PA. STAT. ANN. tit. 62, § 2043.13 (Purdon Supp. 1953).

3. OHIO GEN. CODE ANN. § 12429 (Page 1938). Ohio support law, with reference to the Uniform Act, is discussed in Schuch, *supra* note 1.

4. OHIO GEN. CODE ANN. § 12431 (Page 1938).

5. "SEC. 8007-4. *Obligor bound by applicable laws.*
The duty of support imposed by the laws of this state or by the laws of the state where the obligee was present when the failure to support commenced as provided in section 8007-7 of the General Code and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee. . . .

"SEC. 8007-7. *Election of applicable laws.* Duties of support enforceable under this law are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee." OHIO GEN. CODE ANN. (Page Supp. 1952). Section 4 of the Uniform Act differs slightly, but the variance is immaterial here. 9A UNIFORM LAWS ANN. 59-61 (Supp. 1953).

6. Commonwealth v. Auman, 39 Pa. D. & C. 448 (Phila. Munic. Ct. 1940).

holding that literal application of Section 7 would permit the law of Pennsylvania to determine the existence of the duty of support, thus depriving the son of the equal protection of the laws of Ohio.[7] *Commonwealth of Pennsylvania* ex rel. *Department of Public Assistance, Mercer County Board of Assistance v. Mong,* 117 N.E.2d 32 (Ohio 1954).

The Uniform Reciprocal Enforcement of Support Act was designed to overcome the reluctance of some states to enforce duties of support upon their own citizens in favor of out-of-state dependents, and make simplified, low-cost interstate enforcement of support more readily available.[8] Under the prior conflict of laws rule in support cases, the enforceable duties were those imposed by the state of residence of the one owing the duty of support;[9] if this person entered the jurisdiction in which the person to be supported resided, he thereby subjected himself to the support duties of that state.[10] The Commissioners on Uniform State Laws, in drafting the Uniform Act, did not desire to change any substantive duties of support, or the conflicts rules by which such duties were determined.[11] They feared, however, that requiring the obligee to prove in which state the obligor resided during the period for which support was sought would result in an embarassing lack of applicable law in cases in which the obligee did not know or could not prove the whereabouts of the obligor during this period. To remedy this situation, the Commissioners intended to give the obligee the right to elect the law of the state in which he resided when the failure to support commenced in any case in which the residence of the obligor became an issue.[12] But the Act as originally drafted did not so limit this right, and gave the obligee an absolute election in all cases.[13] This election, applied to the facts of the instant case, caused the Ohio

7. OHIO CONST. Art. I, § 2; U.S. CONST. AMEND. XIV, § 1. Another interpretation of the opinion is made possible by certain language of the court indicating affirmance of the Court of Appeals opinion. See note 23 *infra.*

8. 1950 HANDBOOK OF NATIONAL COMMISSIONERS ON UNIFORM STATE LAWS 171-4. *See* George v. George, 20 N.J. Misc. 41, 46, 23 A.2d 599, 602 (1942).

The Uniform Act is discussed in Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?,* 31 ORE. L. REV. 97 (1952), 17 Mo. L. REV. 1 (1952); Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution,* 37 A.B.A.J. 93 (1951); Lee, *Alabama's Reciprocal Non-support Legislation,* 5 ALA. L. REV. 228 (1953); Schuch, *The New Reciprocal Non-Support Act,* 23 U. OF CIN. L. REV. 75 (1954); Note, *The Uniform Enforcement of Support Act in Massachusetts,* 33 B.U.L. REV. 217 (1953); Note, *New York Uniform Support of Dependents Law,* 1 SYRACUSE L. REV. 300 (1949).

9. Commonwealth v. Acker, 197 Mass. 91, 83 N.E. 312 (1908); RESTATEMENT, CONFLICT OF LAWS § 458 (1934) (by implication); Stimson, *Simplifying the Conflict of Laws,* 36 A.B.A.J. 1003, 1005 (1950).

10. Starr v. Starr, 263 P.2d 675 (Cal. App. 3d Dist. 1953). When the omission to do an act is made a crime, venue is properly laid in the jurisdiction in which the act should have been performed. State v. Peabody, 25 R.I. 544, 56 Atl. 1028 (1904); *In re* Poage, 87 Ohio St. 72, 100 N.E. 125 (1912). *Cf.* Stobie v. Barger, Colo. Sup. Ct., No. 17226 (1954).

11. 1950 HANDBOOK OF NATIONAL COMMISSIONERS ON UNIFORM STATE LAWS 171-4. The amended Act conforms to this intention. See text at note 28 *infra.*

12. Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?,* 31 ORE. L. REV. 97, 99-102 (1952), 17 Mo. L. REV. 1, 3-8 (1952). Professor Brockelbank is the chairman of the committee which drafted the 1950 Act and the 1952 amended Act.

13. See note 5 *supra.* Comment, 20 U. OF KAN. CITY L. REV. 164, 167 (1952).

Supreme Court to hold that the legislature had denied equal protection of the law to the son and others similarly situated.

Equal protection affords relief from discriminatory legislation, so that a state may not treat people differently in a manner which has no reasonable relation to the purposes of its legislation.[14] The court found that the legislature had discriminated against the son by providing a defense from support to all Ohio citizens who had been deserted as children, except those whose parents lived in a state which had adopted the Uniform Act but had no defense for desertion. This conclusion ignores the fact that the residence of the indigent is a reasonable basis on which to determine support duties because of the interest of his state in being relieved of the necessity to support him, the practicality of ascertaining his needs there, and the reciprocal benefit to Ohio involving the support of indigents located within its borders.[15] The court could have taken another interpretation which would have enabled it to arrive at the same result, denying support to the deserting father, while avoiding the constitutional issue of equal protection. This approach would permit the obligee to elect between the support duties of either state, but the specific defense of desertion, which is found in the Ohio Criminal Code[16] rather than the domestic relations field,[17] would not be subject to election. This interpretation, although somewhat complex, is more sound doctrinally,[18] since it gives maximum effect to both statutes and, in accord with the intention of the Commissioners, works little change in the substantive laws of support.[19] The decision of the court in the instant case may be explained in part by the fact that no argument on the constitutional issue was presented in any of the three courts, nor was the equal protection issue passed upon by either inferior court,[20] and in part by the fact that no other case has been discovered in which a conflict of laws question was decided on this ground.

14. State *ex rel.* Mecartney v. Hummel, 81 N.E.2d 799, 801 (Ohio App.), *aff'd*, 150 Ohio St. 18, 80 N.E.2d 436 (1948); ROTTSCHAEFER, CONSTITUTIONAL LAW 551 *et seq.* (1939).

15. Whether a state *must* recognize the duties of support created by statute in another state under the "full faith and credit" provisions of U.S. CONST. Art. IV, § 1 is apparently an open question. See Cataldo, *Full Faith and Credit* in CONSTITUTIONAL RIGHTS 32 (Goodrich ed. 1938); JACKSON, FULL FAITH AND CREDIT, THE LAWYER'S CLAUSE OF THE CONSTITUTION (1945); Comment, 51 MICH. L. REV. 267 (1952). The effect of Hughes v. Fetter, 341 U.S. 609 (1951), upon former interpretations of the full faith and credit clause is highly uncertain.

16. OHIO GEN. CODE ANN. §§ 12368 *et seq.* (Page 1938). The language of § 12431 (defense of desertion) is too broad to make it a defense to criminal actions *only*. See note 4 *supra*.

17. OHIO GEN. CODE ANN. §§ 8001 *et seq.* (Page Supp. 1952).

18. This argument is based on principles of statutory interpretation illustrated by the following cases: United States v. Rumely, 345 U.S. 41, 45 (1953) (constitutional issues avoided wherever possible); Georgia v. Pennsylvania R.R., 324 U.S. 439, 456-7 (1945) (repeal by implication held in judicial disfavor); Musselman Hub-Brake Co. v. Comm'r of Int. Rev., 139 F.2d 65, 67 (6th Cir. 1943) (give maximum effect to each of conflicting statutes).

19. See note 11 *supra*. Compare Schuch, *supra* note 1, at 85-9.

20. In the instant case, three judges dissented because of this lack of argument, although expressing doubts as to the constitutionality of Section 7. Instant case at 34. See Duncan v. Smith, 262 S.W.2d 373 (Ky. 1953), 5 SYRACUSE L. REV. 275 (1954) (declaratory judgment upholding constitutionality of Uniform Act, in which attorneys general of twelve states participated as *amici curiae*).

The Ohio Supreme Court's interpretation of the Uniform Act, giving the obligee an absolute election of both duties and defenses of either state, emphasizes the real problem raised by the Act: to what extent the Uniform Act overruled prior existing support legislation. The Act recognized the existing conflicts rule that the support duties enforceable were those imposed by the obligor's state;[21] it also accepted the alternative possibility of enforcing the duties created by the state in which the obligee resided when the failure to support commenced. The latter rule might be unreasonable because the obligor's state legislature gives up its function of weighing the desirability of any local public policy,[22] such as a defense for desertion, in favor of a blanket solution to a conflicts problem.[23] On the other hand, since the obligee's state has sufficient incidents occurring within its borders to give it legislative jurisdiction,[24] it would seem to be open to the legislature of the obligor's state to direct its courts to recognize any exercise of that jurisdiction.[25] This rule also takes from the obligor some incentive to locate in another state, by denying to him any advantage from the more favorable laws of that state. However, the Uniform Act

21. See note 9 *supra.*

22. Conflict of laws rules established by judicial decision are subject to the universal limitation that no cause of action will be enforced which is contrary to the public policy of the forum. Loucks v. Standard Oil Co. of N.Y., 224 N.Y. 99, 120 N.E. 198 (1918); *cf.* George v. George, 20 N.J. Misc. 41, 23 A.2d 599 (1942) (action *in rem*). See Mertz v. Mertz, 271 N.Y. 466, 468, 3 N.E.2d 597, 598 (1936).

That policy determinations were not completely foreclosed by reciprocal support legislation is illustrated by the case of Vincenza v. Vincenza, 197 Misc. 1027, 98 N.Y.S.2d 470 (N.Y. Dom. Rel. Ct. 1950). In a situation strikingly similar to the instant case, the court in the initiating state refused to transfer the record. Although the holding was based on an interpretation of the New York statute as creating no duty of support from child to parent, the court, assuming *arguendo* that a duty of support existed, refused as a matter of judicial discretion to accept jurisdiction over a case of such "doubtful merit" during "the experimental initial stage" of the statute. *Id.* at 1034, 98 N.Y.S.2d at 478.

The court implied that the responding state would have had to enforce the duty of support if found by the initiating state, regardless of any defenses available under its own statutes. See Comment, 2 SYRACUSE L. REV. 182, 184 n.11 (1950). The New York reciprocal statute was the forerunner of the Uniform Act. See Note, 45 ILL. L. REV. 252 (1950); Note, *The New York Uniform Support of Dependents Law,* 1 SYRACUSE L. REV. 300 (1949). The operation of this statute may be illustrated by *In re* Miller, 114 N.Y.S.2d 304 (Children's Ct., Westchester County 1952).

23. One possible interpretation of the majority opinion in the instant case would affirm the holding of the court of appeals and deny the validity of any such legislative solution to a conflict of laws problem on the ground that the legislature of another state cannot constitutionally be given the power to enact laws governing the rights and duties of Ohio citizens. The adoption of another state's law is, however, a typical judicial solution to a conflicts problem. Since no difference should exist between legislative and judicial power to resolve conflicts questions, and since all cases arising under the Act involve a conflicts problem in which either solution is reasonable, it would seem that this interpretation cannot be sustained. See RESTATEMENT, CONFLICT OF LAWS § 457 (1934). Brockelbank, *supra* note 12, 31 ORE. L. REV. at 99-102, 17 MO. L. REV. at 3-8, points out that similar problems have been solved legislatively in other areas, such as workmen's compensation, marriage, wills and commercial law.

24. *See* Starr v. Starr, 263 P.2d 675 (Cal. App. 3d Dist. 1953); Simonds v. Simonds, 154 F.2d 326 (D.C. Cir. 1946); State, *for the use of* Sherwood v. Sherwood, 13 Ohio App. 403 (1921); RESTATEMENT, CONFLICT OF LAW § 457 (1934).

25. See Brockelbank, *supra* note 12.

not only adopted this alternative conflicts rule, but permitted its application at the election of the obligee.[26] Assuming that an obligee would choose the law most favorable to him in any case of conflict, an election including both duties and defenses has the effect of altering the substantive law of support in favor of the imposition of these duties whenever the policies of the two states conflict. It is doubtful that the Commissioners, or especially the legislatures which adopted the Uniform Act, realized that changes were being enacted which could include laws relating to many phases of domestic relations law, such as validity of marriages, legitimization of children, and divorce. When the discrepancy between the Uniform Act and the prior law was discovered, the Commissioners conformed the Act to their original intention by replacing the election provision of Section 7 with a presumption of the presence of the obligor in the responding state[27] until otherwise shown.[28] Thus, had Ohio adopted the amended Act, in the instant case the son's presence in Ohio would have been presumed until rebutted, and, since it appears that he in fact resided in Ohio for many years, the son's defense of desertion would have prevailed. Removal of the election provision has restored the traditional conflicts rule and accomplished the Act's basic objective: promoting the procedural enforcement of interstate support duties without changing the substantive law of domestic relations.

Constitutional Law—

STATE STATUTE ENFORCING WEIGHT REGULATIONS BY SUSPENDING RIGHT OF CARRIERS TO USE HIGHWAYS CONFLICTS WITH POLICY OF FEDERAL MOTOR CARRIER ACT

A common carrier certified by the ICC to conduct interstate motor operations sought to enjoin proceedings instituted by Illinois authorities on the charge that the carrier had "habitually operated" in violation of a state statute fixing maximum weight and load limits.[1] If convicted, the

26. Compare OHIO GEN. CODE ANN. § 12429 (Page 1938) which provides that the criminal offense of non-support of a parent is deemed, for venue purposes, to have been committed in the county of residence of *either* parent or child. State v. Purk, 115 N.E.2d 197, 204 (Piqua Munic. Ct. 1950), indicates that this statute was enacted to avoid the holding in State v. Dangler, 74 Ohio St. 49, 77 N.E. 271 (1906), that this offense was committed only in the county of residence of the child at the time the failure to support commenced.

27. "'Responding state' means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced." 9A UNIFORM LAWS ANN. § 2(3) (Supp. 1953).

28. 1952 HANDBOOK OF NATIONAL COMMISSIONERS ON UNIFORM STATE LAWS 297-8. At least seventeen jurisdictions have passed the amendment. See note 1 *supra*.

1. ILL. ANN. STAT. c. 95½, §§ 228-9(b) (Smith-Hurd Supp. 1953). Proof of ten or more convictions during any twelve month period constitutes prima facie evidence that a carrier has "habitually operated" in violation of the weight and load limits. ILL. ANN. STAT. c. 95½, § 229(b)(g) (Smith-Hurd Supp. 1953).

carrier would be subject to suspension of its operating privilege for 90 days and the possibility of a one year suspension for subsequent violation.[2] Though it found this penalty not disproportionate to the offense for due process purposes,[3] the Supreme Court of Illinois enjoined enforcement on the ground that the suspension provision conflicted with congressional policy of "developing, coordinating and preserving a national transportation system," [4] and therefore was invalid as to interstate carriers. *Hayes Freight Lines v. Castle,* 117 N.E.2d 106 (Ill. 1954), cert. applied for, 22 U.S.L. WEEK 3284 (U.S., April 19, 1954).

In only a few decisions outside the due process area has the United States Supreme Court passed on the right of a state to enforce a lawful regulation by suspending the operations of an offender. *Hill v. Florida* ex rel. *Watson* [5] held that for a state to enjoin labor unions from operating within its borders until a registration requirement was fulfilled contravened the National Labor Relations Act's declared purpose of granting workers free selection of representatives. In *Western Union Tel. Co. v. Massachusetts,*[6] the Court decided that a valid state tax could not be enforced by enjoining the operation of telegraph companies, since the companies had received a congressional franchise to run their "lines of telegraph through and over any portion of the public domain of the United States. . . ." [7] State motor vehicle taxes containing a suspension provision have been sustained as to carriers with ICC certificates, but the propriety of the sanction was not discussed.[8] Finally, the same right asserted by the state in the present case, prohibition of interstate motor carrier operation for the purpose of enforcing highway regulations, was sustained before federal regulation of carriers became effective.[9] Since then, the court of one state has permitted suspension of certified interstate carriers as a means of collecting penalties for violation of weight limits, but the carrier could terminate the suspension by payment of the penalties.[10] The instant

2. *Id.* § 229(b)(1).

3. Instant case at 112.

4. 49 STAT. 543 (1935), as amended, 54 STAT. 919 (1940), 49 U.S.C. § 301 *et seq.* (1946) (Federal Motor Carrier Act).

5. 325 U.S. 538 (1945); Note, 55 YALE L.J. 440 (1946).

6. 125 U.S. 530 (1888).

7. REV. STAT. § 5263 (1875).

8. Capital Greyhound Lines v. Brice, 339 U.S. 542 (1950); Aero Mayflower Transit Co. v. Board of R.R. Comm'rs, 332 U.S. 495 (1947).

9. Eichholz v. Public Serv. Comm'n, 306 U.S. 268 (1939); H. P. Welch Co. v. New Hampshire, 306 U.S. 79 (1939); *cf.* Detroit-Cincinnati Coach Line, Inc. v. Public Util. Comm'n, 119 Ohio St. 324, 164 N.E. 356 (1928). *But cf.* Railroad Comm'n v. Querner, 150 Tex. 490, 497, 242 S.W.2d 166, 170 (1951).

10. Joyner v. Mathews, 193 Va. 10, 68 S.E.2d 127 (1951); *see* Railroad Comm'n v. Querner, *supra* note 9 at 497, 242 S.W.2d at 170, which denied a state the right to revoke a certificate to operate as an interstate carrier solely because the carrier had violated its state-granted certificate by handling intrastate commerce. The court stated, however, that the result would be otherwise if the regulation had been directed toward protecting the safety of the public or conserving the highways.

case posed for the first time a state's attempt to enforce its regulations by suspending, for a definite period of time, highway privileges of an interstate carrier subject to federal regulation.

The underlying basis for the *Hill* decision might very well have been the Court's reaction to the anti-labor sentiment which surrounded the state statute.[11] The *Western Union* holding may be distinguished on the ground that the Court found that deprivation of the telegraph companies' right to operate was an unnecessary enforcement provision, since the ordinary means of collecting a judgment were still available.[12] From a doctrinal standpoint, a sanction sustained prior to federal regulation of motor carriers should not be altered by the policy of the Federal Motor Carrier Act, since its provisions did not include uniform size and weight requirements but merely authorized the ICC to investigate the problem.[13] It would also be inconsistent to permit suspension as a means of enforcing tax measures passed solely for highway development,[14] but to deny its use to prevent a gradual destruction of these highways.

The extent to which lack of uniformity can plague the trucking industry is illustrated by the Supreme Court decision in 1938 which allowed a state to set maximum weight limits at a level which would exclude over 85 percent of all interstate carriers from the state.[15] However, there has been no national legislation on the subject despite the ICC's report to Congress in 1941 that wide and inconsistent variations in state size and weight laws were burdens on commerce which created the need for limited federal regulation.[16] Apparently Congress has balanced the considerations relevant to size and weight regulation in favor of the importance to a state of preserving its highway investment. Highway rules could be enforced by a sufficiently high level of fines without revoking the privilege to operate, but these fines could produce an equal interference with commerce by driving a persistent violator out of business. If the Illinois court believed that substantially higher fines would have made suspension an unnecessary evil, it should have said so instead of sustaining the sanction as not disproportionate to the offense. The decision gives no hint of what effective method of enforcement, if any, the court will accept and what practical distinction exists, so far as disturbance of commerce is concerned, between that method and suspension.

11. See Note, *State Regulation of Labor Unions,* 55 YALE L.J. 440, 444 (1946).

12. Western Union Tel. Co. v. Massachusetts, 125 U.S. 530, 554 (1888). Compare the statute sustained by the Virginia court in *Joyner v. Mathews,* 193 Va. 10, 68 S.E.2d 127 (1951), which did not provide for collection of the fines but simply granted the right to revoke for nonpayment.

13. 49 STAT. 566 (1935), as amended, 54 STAT. 929 (1940), 49 U.S.C. § 325 (1946). The ICC report was given in 1941. See note 16 *infra.*

14. Capitol Greyhound Lines v. Brice, 339 U.S. 542 (1950); *cf.* Aero Mayflower Transit Co. v. Board of R.R. Comm'rs, 332 U.S 495 (1947).

15. South Carolina State Highway Dep't v. Barnwell Bros., 303 U.S. 177 (1938).

16. ICC, *Federal Regulation of the Sizes and Weight of Motor Carriers,* H.R. Doc. No. 354, 77th Cong., 1st Sess. 25 (1941).

Constitutional Law—

WITHHOLDING DISTRIBUTIVE SHARE UNTIL FOREIGN HEIRS WILL RECEIVE FULL VALUE IS REASONABLE REGULATION NOT IN CONFLICT WITH INHERITANCE TREATY

A Polish citizen,[1] residing in Massachusetts, died intestate in 1942, leaving $2100 in personal property. His heirs in Poland petitioned for the fund after the war, with the Polish Consul General as their attorney in fact. Because the heirs would receive in Polish money under the official exchange rate only one-fifth of the amount which could be obtained under the free exchange rate, the trial judge, acting under a Massachusetts statute,[2] ordered an indefinite continuance until the petitioners could appear in court to establish their identity and their opportunity to receive the fund at full value. The Massachusetts Supreme Court held that the statute, so interpreted, did not conflict with a treaty between the United States and Poland,[3] existing at the time of probate but terminated in 1952,[4] which accorded nationals of either country the right to succeed to and dispose of personal property in the other without discrimination. *Petition of Mazurowski,* 116 N.E.2d 854 (Mass. 1954).

An analogous New York statute[5] has been interpreted to allow courts to withhold payment from the foreign consul if it appears that the heirs will receive nothing, despite a treaty granting a foreign national the right to inherit property in this country.[6] There appear to be no cases holding that payment may be withheld even though confiscation would be only partial, but the legislative history of the New York statute would support that result.[7] It would seem that the Massachusetts statute should be

1. The court assumed that deceased was a Polish national, though the record did not disclose that fact. Unless this was so, the heirs could claim no rights under the treaty. Instant case at 857. Cases interpreting the same language in other treaties: Clark v. Allen, 331 U.S. 503 (1947); Petersen v. Iowa, 245 U.S. 170 (1917); Frederickson v. Louisiana, 23 How. 445 (U.S 1859).

2. "Whenever payment of a legacy or distributive share cannot be made to the person entitled thereto, or such person may not receive or have the opportunity to obtain said legacy or distributive share, the court, on petition of an interested party or in its discretion, may order that the money be deposited in a savings bank or other like institution. . . . When a claimant to such funds resides outside of the United States or its territories, the court in its discretion, in order to assist in establishing such claimant's identity, right and opportunity to receive such fund, may require the appearance in person before the court of such claimant." MASS. ANN. LAWS c. 206, § 27A (Cum. Supp. 1953) (effective March 29, 1950).

3. 48 STAT. 1507, 1511 (1933).

4. For a discussion of the problem created by termination of the treaty see note 23 *infra.*

5. N.Y. SURROGATE'S COURT ACT § 269, appearing in CLEVINGER, ANNUAL PRACTICE OF NEW YORK (Surrogate's Court Act Section) (1939). Pennsylvania has recently enacted a similar statute. Pa. Laws 1953, No. 209, p. 674.

6. Matter of Braier, 305 N.Y. 148, 111 N.E.2d 424 (1953); Matter of Yee Yoke Ban, 200 Misc. 499, 107 N.Y.S.2d 221 (Surr. Ct. 1951); Matter of Weidberg, 172 Misc. 524, 528, 15 N.Y.S.2d 252, 256 (Surr. Ct. 1939).

7. See CLEVINGER, ANNUAL PRACTICE OF NEW YORK (Surrogate's Court Act Section) § 269n. (1939).

interpreted to permit detention of funds only if there would be total confiscation. Yet the court read in "full value" from the language of an unrelated federal statute [8] prohibiting transmission to a foreign country of any draft against funds of the United States when the Government is not reasonably assured of the payee's ability to negotiate it for full value. The legislature's memorandum to the statute [9] offers no support for the court's position. Moreover, the memorandum does not indicate that the statute was intended to apply to estates of other than American citizens. Thus, by limiting the statute to those situations, the court could have avoided conflict with the language of the treaty which, as to personalty, does not extend the inheritance privilege to foreign heirs of American citizens.[10] However, future conflicts could not have been avoided in this way because treaty provisions concerning real property usually do extend to foreign heirs of American decedents.[11]

Even assuming that the court's interpretation of the statute is correct, the existence of a treaty such as the present one limits a state to making reasonable regulations for orderly administration of decedents' estates.[12] In *Wyers v. Arnold* [13] the Supreme Court of Missouri held that a state limitation against probate of a will more than one year after issuance of letters of administration did not conflict with a similar treaty, but was a reasonable regulation because it promoted expeditious administration. New York has held it reasonable to withhold payment if the foreign heirs would receive nothing, saying that this fulfills the duty of the probate court to carry out the wishes of the deceased.[14] However, in the present case, it seems doubtful that the court is respecting the deceased's intentions, since his heirs would not be deprived of their entire inheritance by the foreign government. Moreover, postponement in the instant case until the exchange restrictions are ameliorated does not serve the policy of expeditious administration. Finally, although ostensibly protecting the heirs' property,[15] the present court deprives them of it until at least an indeterminable future time.[16]

8. 54 STAT. 1086 (1940), as amended, 56 STAT. 1028 (1942), 31 U.S.C. § 123 (1946).

9. *Estates and "The Iron Curtain,"* 35 MASS. L.Q. 34 (May 1950).

10. See note 1 *supra;* Meekison, *Treaty Provisions for the Inheritance of Personal Property,* 44 AM. J. INT'L L. 313 (1950).

11. See, *e.g.,* 48 STAT. 1507, 1510-11 (1933) (Polish treaty); Clark v. Allen, 331 U.S. 503 (1947) (interpreting a similar treaty).

12. Wyers v. Arnold, 347 Mo. 413, 147 S.W.2d 644, *cert. denied,* 313 U.S. 589 (1941); *cf.* Rocca v. Thompson, 223 U.S. 317 (1912); Lely v. Kalinoglu, 76 F.2d 983 (D.C. Cir. 1935). The last two cases involved consular rights which the treaties provided were to be exercised only if permitted by the local laws of the country.

13. 347 Mo. 413, 147 S.W.2d 644, *cert. denied,* 313 U.S. 589 (1941).

14. Matter of Weidberg, 172 Misc. 524, 528, 15 N.Y.S.2d 252, 256 (Surr. Ct. 1939); Matter of Braier, 305 N.Y. 148, 154, 111 N.E.2d 424, 426 (1953).

15. See instant case at 858, 859.

16. *Id.* at 856.

No other case has been found in which the "reasonable regulation" was directed specifically at the acts of a foreign party to a treaty.[17] In basing its decision on receipt of funds "at full value," the court disapproves the financial structure of a foreign government which may be a legitimate concomitant of the Communist philosophy disfavoring enjoyment of unearned income and great disparities in individual wealth.[18] Moreover, since the "official" exchange rates of many non-Communist countries differ from the "free" rates,[19] definition of "full value" in the future will necessitate determinations by the court of the magnitude of discrepancy between free and official rates which it will approve. In other areas of international law the doctrine has been enunciated that, in the absence of permission by the Federal Government, American courts "will not sit in judgment on the acts of the government of another done within its own territory."[20] Though most of these cases concern the validity of title to property confiscated by a foreign government, the doctrine's basis, harmonious relations among nations,[21] is applicable to the instant case until some intermediate state between peace and war is given legal countenance.[22] Congressional recognition of this status might be held to abrogate property rights which

17. The legislature's memorandum on the Massachusetts statute indicates that it is aimed specifically at Soviet countries. *Estates and "The Iron Curtain"*, 35 MASS. L.Q. 34 (May 1950).

18. It is noteworthy that although the court withholds this money because the heirs will receive only twenty percent of it and the Polish Government eighty percent, if the "exchange restriction" continues for twenty years, it is likely that the entire amount will escheat to Massachusetts. See MASS. ANN. LAWS c. 206, § 27A (Cum. Supp. 1953); MASS. GEN. LAWS c. 206, § 28, c. 190, §§ 2, 3 (1932). Compare Pa. Laws 1953, No. 209, p. 674, providing that when payment is withheld because heirs will not receive their shares, the funds shall be deposited "into the State Treasury *without escheat.*" *Id.* at 675 (italics added).

19. The following recent rates of five Western European countries are quoted from a communication of May 11, 1954, from the Department of State to the Law Review (on file in Biddle Law Library, University of Pennsylvania Law School):

	(Official) Rate for Conversion of Inheritances (foreign units per dollar)	(Free) Bank Note Rate in Zurich (foreign units per dollar)
France	350.0	370.0
Italy	625.0	637.0
Federal Republic of Germany	4.20	4.225
Norway	7.143	7.56
United Kingdom	0.357[1]	0.371[2]

1. 1£—$2.80.

2. 1£—$2.697.

20. Underhill v. Hernandez, 168 U.S. 250, 252 (1897); Oetjen v. Central Leather Co., 246 U.S. 297 (1918); Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F.2d 246 (2d Cir.), *cert. denied*, 332 U.S. 772 (1947).

21. See Oetjen v. Central Leather Co., 246 U.S. 297 (1918); United States v. Pink, 315 U.S. 203, 232-3 (1942).

22. This course is recommended by Professor Jessup. See Jessup, *Should International Law Recognize an Intermediate Status Between Peace and War?*, 48 AM. J. INT'L L. 98 (1954).

have previously survived the termination of a treaty.[23] The Federal Government's refusal to transmit drafts against its own funds to persons in Soviet countries should not be interpreted as proclaiming the existence of this intermediate condition. On the contrary, federal disapproval of withholding the funds in this case might be inferred from the fact that only accounts of Soviet nationals in excess of $5000 have been blocked.[24] Since the inheritance rights in the instant case survive the termination of this treaty, the importance of exclusive federal regulation of international affairs would indicate that the decision to withhold payment from the heirs should be made solely by the national government.

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23. Although the treaty of friendship with Poland was terminated in 1952 [25 DEP'T STATE BULL. 913-4 (1951)], the deceased in the instant case died in 1942. The rights conferred by Article 4 of the treaty survive the termination of the treaty. Instant case at 857; *accord,* Santovincenzo v. Egan, 284 U.S. 30 (1931). *Santovincenzo* might be distinguished on the ground that no "intermediate status" existed at the time of that case.

24. Exec. Order No. 8785, 6 FED. REG. 2897 (1941); 31 CODE FED. REGS. § 131.30a (Cum. Supp. 1943).